

Application No. 10/848,737

Docket No.: V9661.0080

**REMARKS**

Applicants wish to express their appreciation to Examiner Mosher for conducting a telephonic interview on May 16, 2006 with the Applicants' representative.

Claims 20, 21, 22, 24, 25, 26, 29 and 33 are pending in the case. In the Final Office Action, claim 33 is allowed. The claims directed to a nucleic acid consisting of SEQ ID NO:4 (or a complement thereof) would also be allowable if appropriately amended. Claims 1-4, 7-9, 13 and 20-31 are rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by McSwiggen et al. (WO2004/092383; "McSwiggen"). Claims 1, 4, 20 and 23 are rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Fodor et al. (U.S. Patent Application Publication No. 2001/0053519; Fodor). Claims 1-4 and 20-23 are rejected under 35 U.S.C. § 102(a) as being allegedly anticipated by Genbank locus AY274119, version AY27419.1 or GI:29826276. Claims 13, 27, 28 and 30-32 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly non-enabling. Claims 1-10, 12-14, 23, 27, 28, and 30-32 are herein cancelled without prejudice. Claims 20 and 26 are herein amended. No new matter has been introduced.

Reconsideration of the present application in view of the foregoing amendments and the remarks below is respectfully requested.

**Claim Rejections under 35 U.S.C. § 102**

(1) Claims 1-4, 7-9, 13 and 20-31 are rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by McSwiggen et al. (WO2004/092383; "McSwiggen").

Claims 1-4, 7-9, 13, 23, 27, 28, 30 and 31 are herein cancelled without prejudice to solely accelerate the prosecution of the case. Applicants expressly reserve a right to pursue the cancelled claims in a continuation application. Accordingly, the rejections of these claims are now moot.

Application No. 10/848,737

Docket No.: V9661.0080

The Examiner construed the phrase "consisting essentially of" as equivalent to "comprising", but indicated that "[c]laims directed to a nucleic acid consisting of SEQ ID NO:4 (or a complement thereof) would also be allowable."

Claim 20 is herein amended to replace the phrase "consisting essentially of" with the phrase "consisting of" for the purpose of solely accelerate the prosecution of the case. Applicants expressly reserve a right to pursue a broader claim in a continuation application.

The specific sequence of SEQ ID NO:4 is not disclosed or suggested by McSwiggen and, therefore, neither anticipated by nor obvious over the same.

Claim 26 is herein amended to recite that the nucleic acid molecule of claim 20 is "operably linked to one or more control elements." The support for the amendment can be found, for example, at page 23, lines 22-33.

Accordingly, Applicants respectfully request that the rejection of claim 20, 21, 22, 24, 25, 26 and 29 be withdrawn.

(2) Claims 1, 4, 20 and 23 are rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Fodor et al. (U.S. Patent Application Publication No. 2001/0053519; Fodor).

Claims 1, 4 and 23 are herein cancelled without prejudice and, therefore, the rejections of these claims are now moot.

Claim 20 is herein amended to replace the phrase "consisting essentially of" with the phrase "consisting of."

Accordingly, claim 20 is not anticipated by or obvious over Fodor and the rejection of claim 20 under 35 U.S.C. § 102(e) over Fodor should be withdrawn.

Application No. 10/848,737

Docket No.: V9661.0080

(3) Claims 1-4 and 20-23 are rejected under 35 U.S.C. § 102(a) as being allegedly anticipated by Genbank locus AY274119, version AY27419.1 or GI:29826276.

Claims 1-4 and 23 are herein cancelled and, therefore, the rejection of these claims are now moot.

Claim 20 is herein amended to replace the phrase "consisting essentially of" with the phrase "consisting of." Neither of the references discloses the specific sequence of SEQ ID NO:4.

Accordingly, the rejections of claims 20-22 should be withdrawn.

#### **Claim Rejection under 35 U.S.C. § 112**

Claims 13, 27, 28 and 30-32 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly non-enabling.

Claims 13, 27, 28 and 30-32 are herein cancelled without prejudice solely to accelerate the prosecution of the case. Accordingly, the rejections of these claims under 35 U.S.C. § 112, first paragraph, are now moot.

#### **Canceling Non-Elected Claims**

Claims 5, 6, 10, 12 and 14 are herein cancelled as being non-elected claims.

Applicants believe all the pending claims are now in condition for allowance, an early notification of which is earnestly requested.

Application No. 10/848,737

Docket No.: V9661.0080

No fee is believed to be due for this submission. Should any fee(s) be required, please charge such fee(s) to Deposit Account No. 50-2215.

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Respectfully submitted,

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